

Questionnaire on Exceptions and Limitations to Patent Rights

The answers to this questionnaire have been provided on behalf of:

Country: Democratic People's Republic of Korea

Office: Invention Office

Person to be contacted:

Name: Mr. Hak Chol PANG

Title: Director, Inter Cooperation & External Affairs Division

E-mail: pptayang@co.chesin.com

Telephone: 850-2-18111(381-8544)

Facsimile: 850-2-381-4410

Section I: General

2. As background for the exceptions and limitations to patents investigated in this questionnaire, what exclusive rights are granted with a patent? Please provide the relevant provision in the statutory or case law. In addition, if publication of a patent application accords exclusive rights to the patent applicant, what are those rights?

The relevant provision is provided for in the **Article 28** of the Invention Law of DPR Korea as follows:

“If institutions, enterprises, organizations or citizens wish to use for the production of goods, the science and technology under protection as a patent, they shall obtain the permission of the patent owner.

The patented science and technology may not be transferred to a third party without the consent of the owner.”

3. Which exceptions and limitations does the applicable law provide in respect to patent rights(please indicate the applicable exceptions/limitations):

- Private and/or non-commercial use;
- Experimental use and/or scientific research;
- Preparation of medicines;
- Prior use;
- Use of articles on foreign vessels, aircrafts and land vehicles;
- Acts for obtaining regulatory approval from authorities;
- Exhaustion of patent rights;
- Compulsory licensing and/or government use;
- Exceptions and limitations related to farmers' and/or breeders' use of patented inventions.

Section II: Private and/or non-commercial use

4. If the exception is contained in statutory law, please provide the relevant provision(s):
The relevant provision is provided for in the **Article 33** of the Invention Law of DPR Korea as follows:

”A patented science and technology may be used without the consent of the patent owner if:

- a) it is used for the repair or maintenance of a foreign transport means that stays temporarily in DPRK;
- b) it is used for scientific research and experiment; or
- c) it is used for the preparation of medicaments necessary for medical treatment under a doctor’s prescription. ”

Section III: Experimental use and/or scientific research

11. If the exception is contained in statutory law, please provide the relevant provision(s):
The relevant provision is provided for in the abovementioned **Article 33–b**.
14. Dose the applicable law make a distinction concerning the nature of the organization conducting the experimentation or research(for example, whether the organization is commercial or a not-for-profit entity)? Please explain:
No.

Section V: Prior use

34. How does the applicable law define the scope of “use”? Does the applicable law provide for any quantitative or qualitative limitation on the application of the “use” by prior user? Please explain your answer by citing legal provision(s) and/or decision(s):
No.
35. Does the applicable law provide for a remuneration to be paid to the patentee for the exercise of the exception? Please explain:
No.
36. According to the applicable law, can a prior user license or assign his prior user’s right to a third party?
 Yes
 No

Section VI: Use of articles on foreign vessels, aircrafts and land vehicles

42. If the exception is contained in statutory law, please provide the relevant provision(s):
The relevant provision is provided for in the abovementioned **Article 33–a**.
45. The exception applies in relation to:
 Vessels
 Aircrafts
 Land Vehicles

Spacecraft

47. Does the applicable law provide for any restriction on the use of the patented product on the body of the foreign vessels, aircrafts, land vehicles and spacecraft for the exception to apply (for example, the devices to be used exclusively for the needs of the vessel, aircraft, land vehicle and/or spacecraft)? Please explain your answer by citing legal provision(s) and/or decision(s):

No.

Section IX: Compulsory licenses and/or government use

65. If the exception is contained in statutory law, please provide the relevant provision(s):

The relevant provision is provided for in the **Article 31** of the Invention Law of DPR Korea as follows:

“Where the patented science and technology is needed for the public interest, the state may take over the patent or the right to use the science and technology. In this case, the state shall reimburse the patent owner.”

67. What grounds for the grant of a compulsory license does the applicable law provide in respect to patents (please indicate the applicable grounds):

Non-working or insufficient working of the patented invention

Refusal to grant licenses on reasonable terms

Anti-competitive practices and/or unfair competition

Public health

National security

National emergency and/or extreme urgency

Dependent patents

Other, please specify

71. In case of the grant of compulsory licenses on the grounds of non-working or insufficient working, does the applicable law provide for a certain time period to be respected before a compulsory license can be requested?

Yes

No

72. In case of the grant of compulsory licenses on the grounds of non-working or insufficient working, does the applicable law provide that a compulsory license shall be refused if the patentee justifies his inaction by legitimate reasons?

Yes

No